

Mortgage Broker Practices Act Rulemaking
Panel Meeting Minutes
August 9, 2006

Panel members present: Chuck Cross, Catherine Mele-Hetter, Laura Kiel, Jeff Berglund, Adam Stein, and Jeffrey Lorsch

Absent: Rich Bennion

1. Welcome and Introductions

Chuck introduced the Panel.

2. Recap of Meeting Format and Protocols

Chuck skipped. Everyone in the audience has attended before.

3. Reading and assignment of public comments to date – Cindy Fazio

We received three comments. The first one asks if loan originators of banks, credit unions, and/or net branches have to be licensed and take the test. The answer is no, they're exempt, unless they are a net branch of a mortgage broker. The second question asked about the number of continuing education hours. That is answered in the draft rules. The third comment addresses several areas for us to be aware of. We will put that information in our tips database.

4. Work Session with latest WAC version

Chuck asked the staff to go back and cross-reference the old rules with the new rules to make sure we hadn't missed anything. We did miss a bunch of areas, most of them non-substantive.

These areas need to be brought forward:

- Definition of "license." It needs to be expanded to include "engage in the mortgage broker business or be a loan originator."
- Definition of "registered agent."
- Definition of "transfer."
- Three areas of exemption. Bring the statutory language into the rules.
 - People doing business under court order.
 - People making loans primarily with their own money. There is an ending part that talks about the ability and willingness to hold the loans to maturity.
 - People doing business under any city, county, or political subdivision, or government agency.
- Advertising section – Mortgage brokers are responsible for the accuracy and reliability of its advertising material in compliance with the MBPA.

- When an advertisement includes information about a consumer's current loan that did not come from information obtained by the licensee when soliciting or making a residential loan or assisting a person in obtaining or applying to obtain a residential mortgage loan, the licensee shall provide to the consumer the name of the source in which this information was obtained.
- Any suggestion or representation that the licensee is or is affiliated with a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not represent.
- Section in the statute that talks about you have to make copies of your appraisal title report and credit report available to the borrower.
- Disclosure of significant developments – Things you must tell us within 30 days - revocation of your license in another state, filing of a felony indictment against you, or being convicted of a felony. Things you must tell us within five days – change in your trust account, change in your master business license, change in your standing with the Secretary of State.
- Entire section (Section 160) that used to be known as the good standing requirements. Bring that forward into rules also. Many of them are the same as good standing. This is for when we condition, suspend, revoke or deny a license.
- Fees allowed to be charged by a mortgage broker. Insert at the bottom of page 25.
- Mortgage Broker Commission section. How you adopt and meet according to a regular schedule, etc.

Sections we decided don't need to be brought forward:

- Application procedures
- Licensing standards from other jurisdictions
- Licensing standards for associations
- Recordkeeping – We already covered that sufficiently.
- Fines and penalties

MBWACv20060809 – Latest Version of WAC

Page 13 – Jeff – (46) Residential real estate – Add (viii) “Fractile interest,” fee simple interest, in any of the above.

Page 15 – Jeffrey – Does anyone have a concern with “serious or significant” complaints?

No.

Page 21 – Jeffrey – Do we need to do some research to see if bond requirements are different for exempt and non-exempt loan originators?

Chuck – We have surety bonds and surety bonds for mortgage brokers with independent contractors. Do we still need two types of bonds? It depends what the insurers require. That is a legal question. DFI will check with the Insurance Commissioner's Office and the attorneys.

Jeffrey – If the bond requirement is larger, we want to know.

Page 24 – second question - Adam – **May a mortgage broker be a CLI system provider?**

Can we strike that?

Cindy – This is straight out of the old WAC. Joe Vincent, DFI legal counsel, felt like it needed to be in there. It was the ability of the agency to know of the providers that are out there and to be able to track information about the system providers. It was his understanding that there was a specific legislative desire to track these system providers and see what their procedures are.

Page 6 – (15) – Definition of CLI system provider and (14) CLI systems.

Chuck – Much of this comes from the HUD definition of CLIs.

Chuck - Leave the definition in. Strike the question and answer on page 24.

Page 27 – third question – Jeffrey – **What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

Why do we keep saying “or other person subject to the act?”

Chuck – It’s statutory language. It could be someone who is exempt from licensing, but subject to the Act, but they have never applied. We still need the authorities over them.

Page 29 – sixth question - Jeffrey – **When may the department issue interim mortgage broker licenses?**

Are we going to ask for all the current licenses back?

Chuck – Yes. I think we’ll ask for them back, but they will be void regardless.

Page 31 and 32 – first question on page 31 - Adam – **May I still conduct my mortgage broker business if my mortgage broker license has expired?**

Lender approval in the case of an expired license is going to be the main problem. He would like to add some type of language saying “The director will permit the closing of mortgage loans after the expiration date on the license providing the following takes place:”

Chuck – We could fix it under (1) (e). Add “and the department has granted approval in writing.”

Also add that same language to (2) (f).

Jeffrey – What if there is not an approval yet, do we need a timeline of an approval? What about five days?

Adam – There should be a list of all loans in process given to the department, so they know what is in the pipeline.

Jeffrey – “Obtain loan commitment within five days. Within that time you have conditional loan approval or commitment.”

Catherine – She doesn’t like the way the third paragraph reads. You must cease unless . . . She will word-smith that.

Page 32 – Items still to be addressed –

Jeffrey - Bonds, etc. (four bullets at the bottom of page 32) – Jeffrey will send some language to Cindy tomorrow.

Page 41 – middle of page – Jeffrey - Remove Cindy’s comment once the pipeline language is finalized.

Page 43 – Jeffrey – (3) - It could be interpreted wrong. Suggested language – Change “in the residential mortgage lending or origination business” to “in the lending or origination business.”

Chuck – We will word-smith it.

Chuck - (viii) – It should not be (viii). It should be a continuation of (vii). Combine (vii) and (viii).

Page 45 – first question – Jeffrey – **After passing the designated broker test, will I have to take it again?**

It talks about two years. Did we fix it under loan originators also?

Cindy – This is a different issue. This covers if a company has an additional designated broker waiting in the wings to step in if necessary, but has never been an active designated broker. It doesn’t work though.

Catherine – What is the policy reason? What is the big picture?

Chuck –

1. If you’ve taken a designated broker test, it was a long time ago, and you haven’t been ongoing as a designated broker, can you just come in without taking the test? No, only if you’ve recently been active as a designated broker.
2. Since designated brokers are going to be grandfathered in as loan originators, can people now take the designated broker test, and not have to take the loan originators test? No, a designated broker test only satisfies for loan originator testing if you’ve actually been a designated broker?

John Long – What does it matter?

Chuck –

1. We have a lot of loan originators coming in now to take the designated broker test and using up slots for the designated brokers.
2. The test is going to be substantially different next year.

Chuck – We want to have a single bank of test questions, and you would have to get a higher score to be a designated broker, or there will be some harder questions for the designated brokers.

Adam – The test we have now is 11-12 years old.

Chuck – The designated broker test does not suffice for the loan originator test unless you are or have been an active designated broker for two years within the last five years. That is different than saying the designated broker test will suffice for a designated broker at some point in time.

That is a good compromise.

Chuck – Suggested new question – “If you have never been a designated broker, and you took the test some years back, do you have to take the test again?”

Suggested answer – “Yes. It has to have been within the last five years.”

Chuck – Page 45 – Designated Broker test – You must have taken the test within five years, or you will have to take it again.

Answer – Delete the part about being a designated broker for at least two years.

Chuck - For a loan originator, you need to have been a designated broker for two years within the past five years.

Deb – We might have a FAQ on our website now that says if someone passes the designated broker test, it will suffice for the loan originator test.

Chuck asked Deb to look at our website to see if that is there. We should retract it if the question and answer is incorrect.

Page 47 – bottom of page –

Chuck - Can loan originators going to the fall WAMB conference and taking the ethics continuing education course receive continuing education credit for it?

1. Can we accept credit for something today that isn't even going to happen until next year?
2. Do we want to do that?

We are still waiting to hear back from the Attorney General.

Catherine – We put in the bill that we would take steps necessary to implement the Act before the Act is effective. We need to look at the Act.

Chuck – Can we pre-approve courses for a course provider that isn't even an approved course provider?

Adam – We already have the criteria in place of how we will approve professional associations, we should start facilitating that now.

Chuck – We don't have any currently approved course providers. We have currently approved courses.

Chuck – We need to move forward because of time. He wants to do this for the industry, but he doesn't know if we can. One thing we cannot do is play favorites.

Page 48 – third question - Jeffrey – **May I practice as a licensed loan originator and real estate broker or salesperson for the same borrower?**

The second and third questions seem to be the same thing.

Chuck – He changed this. He didn't want it to be a situation where it only applied when a borrower was referred to you. There is a difference.

Can we combine the second and third questions on page 48?

Answer to second question on page 48 - Cindy – Add “or with the same borrower in more than one transaction” after “in the same transaction” in the second sentence.

Page 49 – second question – Jeffrey – **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?**

Chuck – Delete “No.” in the second paragraph. Move the sentence up to the first paragraph.

Page 57 – third question – Adam – **After passing the loan originator test, will I have to take it again?**

Use the standard five year language again.

Page 74 – Adam – fourth question – **After closing, if an escrow or title company mistakenly wires funds into my general account that are intended for third party services, will the department take action against me for a violation of the trust fund requirements?**

(3) – Change “bank” to “transmitter of the funds.”

Page 88 – (7) – Adam –

Chuck - Only when it is within your control.

Chuck – (7) - Add “of a loan you own or service” before “as of a certain date. . .” in the second line.

(8) – Add similar language.

Page 88 – (10) – Adam – Leaving blanks.

Chuck – This is taken right out of the Consumer Loan Act. We’ve been enforcing this for years.

Chuck – The blanks can be filled in after the borrower has signed it.

Chuck – Suggested language - Change to “Allowing or requiring a borrower to sign documents intentionally left blank for the purposes of altering . . . “

Chuck – Take out of this section and put it as an example of prohibited practices that will be a FAQ.

Page 90 – first question - Adam – **How do I disclose my mortgage broker fees on the settlement statement?**

What is in or beyond our control?

Chuck – “You must disclose or instruct the disclosure of your fees to be on line 808 through 811 of the HUD 1.

Page 98 – middle of page – Cindy’s comments.

Chuck was asking for a waiver, but Enforcement said, “No.”

Delete the comments.

Page 98 – 3. Enforcement Authority

First question – Jeffrey – **Is a mortgage broker responsible for the payment of third-party services even if the borrower has agreed to pay the fees?**

Answer - second paragraph of the first question.

Cindy – Suggested language – “Unless the borrower and third-party service provider have agreed otherwise in writing.”

Chuck – Suggested language – “However, the mortgage broker is not responsible for paying the fee if the third-party service provider has agreed in writing to accept the fee from the borrower.”

Page – 109 – (f) – Jeffrey – Needs the approved courses language like we put in earlier.

Page 112 – third question – **Who serves on the Commission?**

Answer (1) – Change “that is not older than five years from the date” to “at time.”

Jeffrey – Are we going to get the mortgage broker examination manual to look at yet?

Adam – It is still a work in progress. It is more an appendix or addendum, not part of the rules.

Laura – She wants to make sure we have input into that manual before it is final.

Chuck – He is not sure to what extent. The manual is instruction to examination of your company. However, you would probably have valid input on certain sections.

Our intent is to figure out a way to accomplish the examination function and requirement with the least amount of cost and burden possible for the companies. Maybe it is naïve of us to think this is easier. By creating these spreadsheets for you to capture your information, it is our intent to make it easier on you.

Laura thinks it will be a great tool in the future.

Chuck – He spoke to our examiners this week saying the first one to three years of examinations will be frustrating for the examiners, as well as, for the companies. We want to strongly encourage companies in the future to start capturing information in our spreadsheets. We can't order anyone to use them. It would be great and would help us and maybe help the company also.

Laura – Are there other ideas for helping the industry move into this area of compliance?

Chuck – His goal is to spend as much of the fall as he can talking to mortgage brokers to show how they can use this exam manual. He thinks 99.9% of mortgage brokers have no methods in place to keep an eye on the shop. That creates all kinds of liability. We want to give you systems to reduce your liability. He sees the examination program as a positive in the world of compliance, not as enforcement, which would be a negative.

Jeff – The exam is prescriptive in nature. People only do what they have to. Some of these systems will be laid out and put into place through the examination process. We are preparing ourselves for a national license. As we move into these systems, we will be that much further along for the federal guidelines.

Chuck – Five other companies have called us and volunteered to be guinea pigs also.

Chuck – The examiners asked Chuck to ask the Panel - Should we require in the rules that mortgage brokers, with new activity beginning in 2007, capture the information into these worksheets?

Adam – He doesn't think we can put that in rules and mandate someone's internal standard operating procedures. You could recommend it though.

Laura – Are we going to have input into the exam manual?

Chuck – There will never be a final manual. It will be published in the coming weeks and the Commissioners can give input. It won't be like the rules process though where we have a meeting of the minds. We have a couple people on staff who have recently worked for mortgage companies and are pretty familiar with the systems and the way the information is captured.

Jeffrey – Can we get some of these forms already partly filled out from the DFI records? (i.e. name, license number, DBA, loan, volume, addresses)

Chuck – Yes, once we get that information captured. Maybe we would be willing to have the examiners fill in part of the information and have the companies sign them.

5. Public Comments –

John Long –

He looked at the WAMB and DFI websites. WAMB's site says if you pass the broker exam, you don't need to take the loan originator exam.

Laura said she will get that corrected tomorrow.

In April DFI put out a paper of possible questions and answers.

Approving courses now – Why couldn't an entity submit a course for approval today and offer it and next year get loan originator approval?

Chuck – How long does it take you to approve courses right now?

Whittier – A couple months.

Chuck – That is something that we would be receptive to.

Jeffrey – We talked about having continuing education being carried over for designated brokers because of the expiration date.

John – He was thinking if it is approved for a designated broker, it will be approved for a loan originator.

Chuck – If we see a way to do this, is the Panel okay with DFI just writing this in the rules?

The Panel would like to see it first.

Chuck - We would be more lenient, not more restrictive.

John – All players should have an equal opportunity.

John – Net branches – There are a ton of net branches that have employees – receptionists, etc., not loan originators. Chuck said net branches cannot have employees except as employees of the main office. Is that correct?

Chuck – Licensees and the branch offices of licensees have to follow the requirements we have set in rules for who can and cannot have employees. We don't acknowledge net branches. We are not telling net branches how they can and cannot conduct business. We are just telling our licensees how they can do business.

John – A receptionist is an employee of an independent contract loan officer that has a branch location. The main office has no desire to have any relationship with that receptionist. Does that receptionist have to be on the licensee's payroll directly?

Chuck – We are not saying that the receptionist must be on the licensee's payroll. We are saying that the receptionist cannot be on the loan originator's payroll.

Chuck - We say you are only a loan processor when you are operating for a licensed mortgage broker and under the supervision of a licensed mortgage broker or someone who is exempt.

John - Thanks for the commitment that has been exhibited.

Jim Irish –

A good job has been done.

The concern he has is for Catherine and any other attorneys in the room. Is there some precedent in Washington case law that would apply to third-party service providers receiving a check from a party other than the mortgage broker that would disrupt the relationship between the mortgage broker and the appraiser? We can not be in a situation where the borrower becomes the appraiser's client. The lender is really the client. He doesn't want a situation where we are disrupting the broker / appraiser or broker / third-party relationship. It makes the borrower a secondary client.

Catherine – Where do you see that in the rules?

Laura – Under the trust funds section.

Chuck – That is language brought forward from the existing rules. We haven't been challenged on that to date.

Catherine – She does not know if payment makes you a client.

Jim – We want to make sure we do not disrupt the client relationship.

Chuck – It sounds like there might be some legal research that needs to be done on the appraiser's side.

If the borrower pays for the appraisal, we want to make sure we haven't established an avenue whereby the borrower becomes the client. Appraiser independence can only be established when the broker has engaged the appraiser.

Barry Wilson, Appraiser's Coalition of Washington. There is no mention of number of hours required for continuing education.

Chuck - Two courses for loan originators, three courses for designated brokers. The courses can be no less than three hours each.

Barry – It is going to be a selling point that you are the only licensed loan originators in the state. Other professional groups in the finance industry require the following continuing education:

- Real estate agents and brokers – 32 hours every two years
- Insurance agents - 32 hours every two years
- Real estate appraisers – 28 hours every two years

He would think a minimum of 10-12 hours per year would be more appropriate.

Continuing education – When can it be applied if it is taken before we have licensing? He can't get credit for any other continuing education courses he takes early. He encourages a 4-8 hour ethics class. He wishes we had a pre-licensing education requirement also.

Adam – The amount of education - Knowing that it was a fight to get this legislation this far, we didn't want to put the bar too low or too high. The bar can be adjusted by rule as time goes by. Real estate brokers can take clock hours early and have them carry over. No, we don't have pre-licensing requirements, but we hope that the test will help.

Barry - He likes the improvements to the prohibitive practices.

Chuck – Thank you for your interest also.

John Wilde –

Thank you to the Panel and the department for making this public and for allowing interested parties who want to stay compliant participate. This has allowed him to report back to his own team and get them ready.

Why can't continuing education credits be grandfathered in up to a certain date? Why is it so complicated?

Adam – Some people want to take the ethics course early, but the course providers and courses have not been approved yet.

Jeffrey – The difference is how one accredits the class also. Currently it is the course that is approved. Under the new Act, it will be the course provider that will be approved.

Two Mortgage Broker Commission meetings before the rules meetings started, didn't we say if mortgage brokers attended the rules meetings, they would get continuing education credit?

Adam – No. We only offer credit for attending the normal Mortgage Broker Commission meetings.

John - The form in the examination manual gives a yellow or red flag that tells us when something is wrong. Will it also give us a fix for the problem? If he can show during the examination that he has fixed the problem, is that okay?

Chuck – Some things can be fixed, some cannot.

Chuck – The manual will be an ongoing project. He can put that on the list of things to include.

John – In the coming weeks, the sub-committees will meet, and emails will go around. Will the draft of the WAC be posted again? Will the hearing date and time be posted?

Chuck – Yes. The next version will be the version that goes to the Code Reviser. Only non-substantive things can still be changed after that. We will then have a hearing. After the hearing, there is still the ability for the director to make non-substantive things.

John – My next chance to make comments is at the hearing, right?

Chuck – Yes.

Page 5 - bottom of page – (13) Compensation or gain – “trips and payments of another person's expenses.” What does that mean?

Chuck – It means that you are doing a loan for X, you claim you're doing it for no compensation, but send X on an all expense paid vacation to Hawaii. That is still compensation or gain.

Chuck – This is the definition of thing of value under Regulation X to RESPA. We only changed a few words. It has stood up since 1975.

Page 7 (22) Discount points – Maybe this can be clarified. Discount points and points don't mean that you are buying down the rate.

Chuck – This is again taken from Regulation X from RESPA. This says “discount points” or “points” means this.

Page 10 – last paragraph - For purposes of further defining. Shouldn't it say “definition” instead of “defining?”

Page 11 and 12 – page 12 first paragraph - For the purposes of this definition . . . A mortgage broker has to send that package to a lender. Shouldn't it also say “or submits to an approved lender.”

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Chuck – It's okay. The mortgage broker may be a lender also.

Cindy – It is not meant to be a complete list.

Page 15 – Whether the licensee has filed their mortgage broker annual report . . . When will that form be available?

Chuck – You will only have to fill in two boxes. How many loans did you do in 2006, and what was the total dollar volume of those?

Thank you again.

Chuck thanked John for showing up time after time and making comments. It proves that this was an open process.

Called to order – 1: 40 p.m.

Adjourned – 4:50 p.m.